

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3083
Administrative Law Judge Division
March 6, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3083. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

WESLEY M. FRANKLIN
Executive Director

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3083 (3/6/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-01-036 AMERICAN WATER WORKS COMPANY, INC., APOLLO ACQUISITION COMPANY, CALIFORNIA- AMERICAN WATER COMPANY (U 210-W), RWE AKTIENGESELLSCHAFT, THAMES WATER AQUA HOLDINGS GMBH, THAMES WATER, PLC, Joint Application of California-American Water Company (U 210-W), a California corporation, RWE Aktiengesellschaft, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Aqua Holdings GmbH, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Plc, a corporation organized under the laws of the United Kingdom and Wales, and Apollo Acquisition Company, a Delaware corporation, for an order Authorizing Apollo Acquisition Company to merge with and into American Water Works Company, Inc., resulting in a change of control of California-American Water Company, and for such related relief as may be necessary to effectuate such transaction. (N01-12-027)	Ratesetting	Ratesetting	NO
A02-01-041 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-E), for an Order Approving an Amendment to the Power Purchase Agreement for long-term energy and capacity between [it] and Gaylord Container Corporation, a Delaware corporation	Ratesetting	Ratesetting	YES
A02-01-042 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-E), for an Order Approving an Amendment to the Power Purchase Agreement for long-term energy and capacity between [it] and Oildale Energy, L.L.C., a California Limited Liability Company	Ratesetting	Ratesetting	YES
A02-02-018 THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, The Burlington Northern Santa Fe Railway Company for an order closing Avenue 13, CPUC Crossing No.2-1016.3, D.O.T. No. 028-603-E, at its intersection with Applicant's main track Madera County, California	Adjudicatory	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3083 (3/6/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-02-019 UNION PACIFIC RAILROAD, for Authority/Order to construct, operate and maintain a new at grade crossing of East Cooley Drive, CPUC Crossing No. B-540.71-C, D.O.T. No. 921264N, City of Colton, County of San Bernardino	Ratesetting	Ratesetting	NO
A02-02-021 GREAT AMERICA NETWORKS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-02-022 CITY OF PLACENTIA, for Authority to construct a grade separated underpass at the existing at-grade crossing of Melrose Street, existing Public Utilities Commission Crossing No.2B-43.10, D.O.T. No. 026576-D, within the County of Orange	Ratesetting	Ratesetting	NO
A02-02-024 THE UTILITY REFORM NETWORK, for Rehearing of Resolution E-3765	*	*	*
A02-02-025 PRONET COMMUNICATIONS, INCORPORATED, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-02-029 DIGIZIP.COM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-02-030 CALIFORNIA-AMERICAN WATER COMPANY, (U 210-W), for an Order Authorizing an Addition to its Main Extension Rule, Rule 15, to Establish a Dry Creek Developers Special Facilities Fee for an Undeveloped Portion to its New West Placer County Service Area	Ratesetting	Ratesetting	NO

*Application for Rehearing of Resolution is assigned to Legal Division. Categorization/Need for Hearing will be addressed as necessary if the Commission subsequently grants rehearing.

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3083 (3/6/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-02-031 TELEPHONE CONNECTION LOCAL SERVICES, LLC, (U5522-C), for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in its Second Annual Review of Unbundled Network Element Costs pursuant to Ordering Paragraph 11 of D99-11-050	Ratesetting	Ratesetting	NO
A02-02-032 AT&T COMMUNICATIONS OF CALIFORNIA, INC., WORLDCOM, INC., for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and signaling Networks and Call- Related Databases in its Second Annual Review of Unbundled Network Element Costs pursuant to Ordering Paragraph 11 of D99-11-050	Ratesetting	Ratesetting	NO
A02-02-033 ENHANCED COMMUNICATIONS NETWORK, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-02-034 PACIFIC BELL TELEPHONE COMPANY, (U 1001 C), for the Commission to Re-Examine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs pursuant to D99-11- 050	Ratesetting	Ratesetting	NO
A02-03-002 XO CALIFORNIA, INC., (U 5553 C), for the Commission to Re-Examine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops provided by Pacific Bell Telephone Company, as and for the Commission's Second Triennial Review of Recurring Unbundled Network Element Costs pursuant to Ordering Paragraph 11 of D00- 11-050	Ratesetting	Ratesetting	NO